THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO.17872 OF 2005

Dated:18-08-2005

Between:

M.Uppalaiah, S/o.Kistaiah, aged about 35 years,

R/o.Jangaon-506 167, Warangal District.

.....Petitioner.

AND

The Chief General Manager, Telecom, BSNL, AP

Sanchar Bhawan, Hyderabad and 3 others.

.....Respondents.

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WRIT PETITION NO.17872 OF 2005

ORDER: (Per MVR,J)

This writ petition is filed with the following prayer:

> *"… the petitioner respectfully prays that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction, more particularly a writ in the nature of Mandamus declaring that the petitioner is entitled to reinstatement, i.e. as per his seniority according to Government's orders but not re-engagement as such "as and when the Department* would like to engage (*now BSNL, not Department) as directed by the 4th Respondent-Tribunal inasmuch as re-engagement results in forfeiting past service and seniority promotions though the petitioner has the right of reinstatement with protection of seniority among Casual Mazdoors and for grant of all benefits, such as Temporary Status and absorption as Regular Mazdoor along with wages due and admissible to him w.e.f. the due date or from the date his junior is so granted such benefits, besides paying him arrears of his wages with increments and other monetary benefits such as bonus, promotions, etc. which accrued to similar other employees and also directing Respondent-Authorities to pay him exemplary costs, which may be quantified by this Hon'ble Court, so that he gets at least some relief from the back-breaking financial burden he was compelled to bear for several rounds of litigation in this case. …"*

The petitioner and others were engaged as casual labourers in Railway Electrification Project, Secunderabad and they worked there till 30.12.1995. On

completion of the said project, they were diverted to Telephone District, B.S.N.L., Warangal and they worked there up to 30.09.2001. They were re-engaged on 16.02.2000 and worked up to 31.03.2001.

The petitioner and 19 others filed O.A.No.37 of 2002 before the Central Administrative Tribunal, Hyderabad bench (for brevity "the Tribunal") and the same was disposed of on 03.10.2002. The operative portion of the order of the Tribunal runs as follows:

> "6. That being the position, I find it just and proper to dispose of this application by directing the respondents to consider the case of the applicants in re-engaging them as and when the Department would like to engage casual labour in future or for the additional posts created as mentioned in letter No.TA/EST/7-45/2001/WL/6 dated 3.9.2001, in preference to freshers."

Thereafter, the petitioner alone filed the writ petition No.4911 of 2004 for issuance of an appropriate direction, order or writ, more particularly, a writ in the nature of Mandamus declaring that the petitioner herein is entitled to absorption as Regular Mazdoor (Group-D) in his turn according to his seniority (as recruited from 1-1-1988) among Casual Mazdoors of Warangal Telecom District with consequential directions 1) to the 2nd respondent to employ him in Warangal Telecom District within a specified date without any further delay keeping in view his seniority as casual mazdoor. 2) to appoint him in that District as Regular Mazdoor (or RM) in a Group-D Cadre without prejudice to his seniority as such RM above the one who was initially recruited/employed as Casual Mazdoor on or after 2nd Jan, 1988. 3) to grant him arrears of his wages with increments he is entitled to from the date he is conferred Temporary status, as prayed above i.e., counting his Temporary Status service from 1-10-1988 onwards, together with all resultant monetary benefits 4) to direct 2nd and 3rd respondents to pay arrears of his wages for the periods they employed him in their respective jurisdictions, within a specified period of, say, 3 months from date of receipt of order/direction herein as otherwise the petitioner will continue to suffer from avoidable starvation, loss and injury, and 5) to award exemplary costs to compensate for the mindless sufferings inflicted on the petitioner, besides passing such other orders.

The said writ petition was disposed of by a Division Bench of this Court making the following order:

> "The matter pertains to absorption and appointment of the petitioner by the respondents. This matter had already been decided by the Tribunal and the petitioner was party to the Tribunal Judgment. During the hearing, the learned Counsel for petitioner submitted that he wants a direction against the respondents that they should implement the order of the Tribunal passed in O.A.NO.37 of 2002 dated 03.10.2002. If the petitioner has a grievance that the Tribunal Order is not complied with, he should approach the Tribunal itself and the Tribunal has got ample powers to get its order executed.
>
> In these circumstances, the Writ Petition is mis-conceived, which is accordingly dismissed."

Then, the petitioner filed a review petition in RASR No.260 of 2005 in O.A.No.37 of 2002 before the Tribunal. The said Review Application was disposed of by the Tribunal by circulation. The Tribunal had chosen to dismiss the same holding that no error was committed by the Tribunal in passing the order dated 03.10.2002.

It is submitted by the learned counsel for the petitioner that the above order of the Tribunal is illegal inasmuch as no opportunity of being heard was given to the petitioner and is arbitrary. It is averred that the order is violative of the principles of natural justice betraying lack of diligence on the part of the Tribunal insofar as judicial aspects of the case are concerned.

Before taking up the point urged by the learned counsel, it is necessary to state few facts.

It appears that the writ petitioner has not made up his mind clearly as to the course of action he has to follow. In the earlier writ petition in W.P.No.4911 of 2004, the grievance put-forth was that the order of the Tribunal was not complied with. Therefore, this Court directed him to approach the Tribunal itself which has got ample powers to get its orders executed. Though the writ petition was disposed of on 8th March, 2004, he approached the Tribunal with a review application in the year 2005. The order made by the Tribunal in the Review Application shows that the petitioner filed M.A.No.275 of 2004 in O.A.No.37 of

2002 earlier and withdrew the same with liberty to file appropriate application. It is thereafter, in pursuance of the withdrawal of the said M.A., the review application in RASR No.260 of 2005 appears to have been filed. The prayer in the present writ petition is also an *omnibus* prayer. Though the contention of the learned counsel is that aggrieved by the order made in the review petition by the Tribunal, the petitioner approached this Court, it is not clearly stated anywhere in the writ affidavit that aggrieved by that order only he knocked at the doors of this Court. Thus, the writ petitioner has chosen a course which is directionless. He is not clear as to what he wanted.

Now coming to the point urged by the learned counsel for the petitioner that the Tribunal acted arbitrarily and against the principles of natural justice in not affording an opportunity to him to present his case, it is apt to quote here Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987, which is as under:

> *"RULE 17. Application for review:- (1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.*
>
> *(2) A review of application shall ordinarily be heard by the same Bench which has passed the order, unless the Chairman may, for reasons to be recorded in writing, direct it to be heard by any other Bench.*
>
> *(3) Unless otherwise ordered by the Bench concerned,* ***a review application shall be disposed of by circulation and the Bench may either dismiss the application or direct notice to the opposite party****. (*emphasis is mine)
>
> *(4) Where an application for review of any judgment or order has been made and disposed of, on further application for review shall be entertained in the same manner.*
>
> *(5) No application for review shall be entertained unless it is supported by a duly sworn affidavit indicating therein the source of knowledge, personal or otherwise, and also those which are sworn on the basis of the legal advice. The counter affidavit to review application will also be a duly sworn affidavit wherever any averment of fact is disputed."*

Thus, the Rule empowers the Tribunal to dispose of a review application by Circulation and it is what the Tribunal did in this case. The above Rule is not challenged before this Court. Thus, we see no force in the contention of the learned counsel for the petitioner that the Tribunal committed a grave error in

not giving an opportunity of being heard to the petitioner. As such, this writ petition is liable to be dismissed at the stage of admission itself.

In the result, the writ petition is dismissed at the stage of admission, but in the circumstances without costs.

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J.CHELAMESWAR, J.

Date:18.08.2005.

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M.VENKATESWARA REDDY, J.

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